

REMARKS/ARGUMENTS

Reconsideration of the above-identified application is respectfully requested.

Claim Rejections – 35 U.S.C. §103

Claims 1-7 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Russell (U.S. Patent No. 3,440,665) in view of Fregeolle (U.S. Patent No. 3,975,929). The Examiner has set forth the rejection of claim 1 as follows:

In regard to Claim 1, Russell teaches a stocking garment (4) comprising a foot portion (11, 15), leg portion (12, 11) having a lower leg portion and an upper leg portion and a waist support (18) spaced above the leg portions (11, 12). A hip portion (17) extending between the leg portion and the waist support portion. *The hip portion (17) having a cutout portion (21, 22) on each side of the hip portion sized to accommodate the lower waists of the wearer so that the stocking may be worn on either leg (Figure 1).* The waist portion (18) constructed so as to accommodate a fastener (27, 28) surrounding the patient's waist and the stocking being capable of being worn on either leg of the patient (Figures 1 and 2).

However, Russell fails to teach the stocking being a therapeutic gradient compression stocking.

Fregeolle teaches a therapeutic gradient compression stocking (column 1, lines 4-9). (emphasis added) *Office Action dated 12/23/05 at page 3.*

To support the combination of Russell and Fregeolle the Examiner states that "since the stocking of Russell provided with the therapeutic compression construction would provide not only a stocking garment that secures at the waist to prevent the garment from falling down when worn but also provides therapeutic needs to the wearer preventing incidence of pulmonary embolism."

This rejection is respectfully traversed. Not only does Russell fail to teach a therapeutic gradient stocking, Russell also fails to teach the limitation of claim 1 that requires *the hip portion to have a cutout portion on each side of the hip portion sized to accommodate the lower waists of the wearer so that the stocking may be worn on either leg.* Furthermore, the stocking of Russell is not capable of being worn on either leg. Therefore, neither Russell alone or taken with Fregeolle teach a compression stocking having all the limitations of Claim 1. Reconsideration of this rejection in view of the shortcomings of Russell is respectfully requested.

In regard to claim 2, the Examiner states that Russell teaches the waist portion (18) including strap engaging loop having a waist strap passing there through (figures 2 and 6).

Claim 2 is directed to a waist portion that includes a strap engaging loop having a waist strap passing therethrough. The Examiner has cited Russell as teaching the waist portion including the strap passing therethrough and, in particular, Figure 6. It is respectfully submitted the Examiner is incorrect in his interpretation of Figure 6 of Russell. Figure 6 is a figure taken along the line 6-6 of Figure 5 which shows that the strap does not pass through the looped area around the waist but is in fact sewn in at 30 just inside one of the tube ends. *See Col. 2, lines 33-39.* In addition, claim 2 is dependent upon claim 1 which is otherwise allowable.

In regard to claim 3, the Examiner states that Russell teaches the waist strap fastening on either the left side or the right side of the strap (figures 2, identifiers 26, 27, 28, 29).

Claim 3 is directed to the therapeutic stocking wherein the waist strap fastens on either the left side or the right side of the strap. Although the Examiner points to figure 2 and the identifiers 26, 27, 28 and 29, which does show fasteners at the front of the hosiery and at the rear of the hosiery, it is noted that Figure 2 shows the fasteners connecting two hosiery legs together and does not fasten at either the left side or the right side of the strap but the front or the back of the strap. Furthermore, since claim 3 is dependent upon claim 2, which is otherwise allowable, the Applicant respectfully submits that claim 3 should be allowed.

In regard to claim 4, the examiner states that it would have been obvious to have provided the foot portion having a closed toe configuration or a toe opening configuration, because as long as the stocking supports the user's leg and has a connecting waist portion allowing the stocking to be worn on either foot the toe configuration can be chosen by one having ordinary skill in the art based upon end use of the garment.

Claim 4 is dependent upon claim 1 and includes a portion of the hosiery that has a toe opening. The Examiner cites no prior art against this claim but notes that one of ordinary skill in the art would know to open the toe of the hosiery. Since claim 4 is directly dependent upon claim 1, which is otherwise allowable, the Applicant respectfully submits that claim 4 should be allowed.

In regard to claim 5, the examiner states that Russell teaches the foot portion having a closed toe (11-15).

The Examiner notes that Russell teaches a foot portion having a closed toe. The Applicant respectfully submits that since claim 5 is dependent upon claim 1, which is otherwise allowable, then claim 5 should be allowed.

In regard to claim 6, the examiner states that Russell fails to teach the pressure in the distal end of the stocking gradually decreases to the proximal end. Fregeolle teaches the pressure in the distal end of the stocking gradually decreases to the proximal end of the stocking (column 1, lines 4-9).

Claim 6 is directed to more particularly point out attributes of a gradient compression stocking noting that the pressure in the distal end of the stocking gradually decreases from the proximal end. The Examiner has noted that Fregeolle teaches a pressure in a distal end of the stocking decreases and, of course, this is an attribute of gradient compression stockings in general. Claim 6, however, is dependent upon claim 1, which is otherwise allowable, and therefore should be allowed.

In regard to claim 7, the examiner states that Russell teaches the hip portion extending from about 30% to 50% of the circumference of the upper opening of the stocking exclusive of the cutouts (figures 1 and 2)

Claim 7 claims the hip portion extending a particular amount about the circumference of the upper opening of the stocking exclusive of the cutouts. The Examiner states that Russell teaches the hip portion extending from about 30-50% of the circumference of the upper opening exclusive of the cutouts and notes Figure 1 and Figure 2. It is submitted that Figure 1 and Figure 2 does not show any range of circumference around the upper opening of the stocking exclusive of the cutouts and in fact would appear to be much less than 30%. Unless the Examiner can show some definitive disclosure in Russell for the claim limitation, it is submitted that the claim should be allowed. Furthermore, the claim is dependent upon otherwise allowable claim 1.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of

Appl. No.: 10/780,510
Amendment Dated 02/28/2006
Reply to Office Action of December 23, 2005

this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

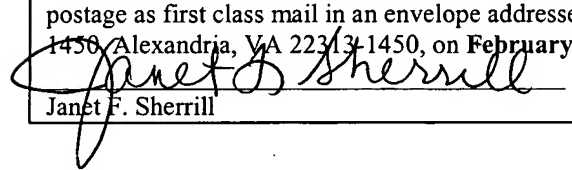


Ernest B. Lipscomb, III
Registration No. 24,733

Customer No. 00826
ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Tel Charlotte Office (704) 444-1000
Fax Charlotte Office (704) 444-1111
CLT01/4779412v1

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on February 28, 2006.



Janet F. Sherrill